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2 May-22 July 1994

DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION

Rapporteur: Mr. Peter KABASTSI

CHAPTER VI

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

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CHAPTER VI

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

A. The law and practice relating to reservations to treaties

1. At its .... meeting, on .. July 1994, the Commission appointed Mr. ..... Special Rapporteur for the topic "The law and practice relating to reservations to treaties".

B. State succession and its impact on the nationality of natural and legal persons

2. At its ... meeting, on .. July 1994, the Commission appointed Mr. ..... Special Rapporteur for the topic "State succession and its impact on the nationality of natural and legal persons".

C. Programme, procedures and working methods of the Commission and its documentation

3. At its 2328th meeting, on 2 May 1994, the Commission noted that in paragraph 10 of resolution 48/31, the General Assembly had requested it

"(a) To consider thoroughly:

(i) The planning of its activities and programme for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;

(ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;

(b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

4. The Commission agreed that this request should be taken up under item 7 of its agenda entitled "Programme, procedures and working methods of the Commission and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

5. The Planning Group held three meetings. It had before it the section of the topical summary of the discussion held in the Sixth Committee of the

General Assembly during its forty-seventh session entitled "Programme of work of the Commission" (A/CN.4/457, paras. 432 to 443). Mr. Hans Corell, Under-Secretary General, The Legal Counsel, addressed the Planning Group at its first meeting.

Planning of the activities for the remainder of the quinquennium

6. The current programme of work consists of the following topics: State responsibility; draft Code of crimes against the peace and security of mankind; international liability for injurious consequences arising out of acts not prohibited by international law; the law and practice relating to reservations to treaties; and State succession and its impact on the nationality of natural and legal persons. 1/

7. In accordance with paragraph 10 (a) (i) of General Assembly resolution 48/31, the Commission considered the planning of its activities for the remainder of the term of office of its members. In doing so, it bore in mind, as requested by this resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

8. The Commission agreed that, while the adoption of any rigid schedule would be impracticable, the setting up of goals in planning its activities would be useful.

9. Taking into account the progress of work achieved on the topics in the current programme as well as the state of readiness for making further progress, and bearing in mind the different degrees of complexity of the various topics, the Commission confirms its intention to endeavour to complete by 1996 the second reading of the draft articles on the Code of crimes against the peace and security of mankind and the first reading of the draft articles on State responsibility. As regards the topic "International liability for injurious consequences arising out of acts not prohibited by international law", it will endeavour to complete by 1996 the first reading of the draft articles on activities having a risk of causing transboundary harm. It furthermore intends to undertake work on the topics "The law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons".

1/ The Commission noted that, in paragraph 7 of its resolution 48/31, the Assembly had endorsed the Commission's decision to include in its agenda the last two of the above-mentioned topics, on the understanding that the final form to be given to the work on these topics shall be decided after a preliminary study is presented to the General Assembly.

Contribution of the International Law Commission to the Decade of International Law

10. In accordance with the decision taken by the Commission at its last session, the Working Group, set up at the forty-fourth session to consider the question of the contribution of the International Law Commission to the Decade of International Law, met under the chairmanship of Mr. Pellet in order to formulate proposals concerning the issuance, on the occasion of the Decade, of a publication containing studies by members of the Commission. The Working Group included, in addition to its Chairman, Mr. Al-Khasawneh, Mr. Crawford, Mr. Fomba, Mr. Mahiou, Mr. Rao, Mr. Rosenstock, Mr. Szekely, Mr. Tomuschat, and Mr. Vereshchetin.

11. The Chairman of the Working Group indicated that 32 members in addition to himself had expressed readiness to contribute to the publication, on the understanding that contributions would not exceed 15 pages and would be handed over to the Secretariat on 15 June 1995 at the latest. The provisional contents of the publication was agreed upon by the Working Group in the light of the wishes expressed by individual members. In order to minimize the costs, the Working Group recommended that, at this stage, the publication be a bilingual one and include contributions in English or in French, it being understood, however, that the Secretariat will endeavour to ensure the translation into English or French of the contributions which might be submitted in one of the four other official languages of the United Nations.

12. The Commission approved the plan of the publication and the practical ways and means of carrying out the project, as described by the Chairman of the Working Group. It furthermore recommends that the General Assembly consider the possibility of allocating funds for the issuance of the publication in all the official languages of the United Nations and that Member States where national committees for the Decade have been established should encourage those Committees to arrange for the translation and issuance in their respective languages of the publication to ensure the widest possible dissemination of the publication among scholars and students of international law throughout the world.

13. The Commission decided that the Working Group chaired by Mr. Pellet would continue its work to formulate recommendations on other contributions by the Commission to the Decade of International Law, to be submitted to the Commission at the next session.

Documentation of the Commission

14. The Commission was informed that the Chairman of the Commission had received from the Chairman of the Committee on Conferences a communication indicating that the General Assembly, in paragraph 16 of its resolution 47/202 B, had decided that there should be a comprehensive review of, inter alia, the need for and usefulness and timely issuance of verbatim and summary records and that, in paragraph 3 of resolution 48/222 B, the Assembly encouraged all bodies currently entitled to written meeting records to review the need for such records and to communicate their recommendations to the General Assembly at its forty-ninth session.

15. The Commission wishes to convey its appreciation to the General Assembly for having maintained the provision of summary records of the meetings of the Commission by its resolution 45/238 B of 21 December 1990 which is recalled in the preambular part of resolution 48/222 B.

16. The Commission has conducted a careful review in response to General Assembly resolution 48/222 B and concluded that the views which it had occasion in the past to express on the matter continue to be valid. Accordingly, it wishes to reiterate them as follows as its recommendations to the General Assembly.

17. The Commission is aware that the cost of providing records of meetings is not insignificant and it does not at all wish to minimize or discourage generalized efforts by the Organization to effect savings and reduce its financial and administrative burden. The Commission feels obliged, nevertheless, to call to the attention of the General Assembly the fact that the question of continuing to provide the Commission with summary records is not exclusively a budgetary and administrative question because it also, and primarily, involves matters of legal policy affecting the process of the promotion of the progressive development of international law and its codification undertaken by the United Nations pursuant to Article 13, paragraph 1 (a), of the Charter. There is no doubt, in the opinion of the Commission, that the discontinuance of summary records of its meetings would affect its procedures and methods of work and have a negative impact on the performance by the Commission of the tasks entrusted to it by the General Assembly. The need for summary records in the context of the Commission's procedures and methods of work is determined by, inter alia, the functions of the Commission and its composition. As its task is mainly to

draw up drafts providing a basis for the elaboration by States of legal instruments, the debates and discussions held in the Commission on proposed formulations are of paramount importance, in terms of both substance and wording, for the understanding of the rules proposed to States by the Commission. On the other hand, pursuant to the Commission's Statute, members of the Commission serve in a personal capacity and do not represent Governments. States have therefore, it is submitted, a legitimate interest in knowing not only the conclusions of the Commission as a whole as recorded in its reports but also those of its individual members contained in the summary records of the Commission, particularly if it is borne in mind that members of the Commission are elected by the General Assembly so as to ensure representation in the Commission of the main forms of civilization and the principal legal systems of the world. Moreover, the summary records of the Commission are also a means of making its deliberations accessible to international institutions, learned societies, universities and the public in general. They play an important role, in that respect, in promoting knowledge of and interest in the process of promoting the progressive development of international law and its codification.

18. The above-mentioned considerations lead the Commission to recommend to the General Assembly the continuing provision of summary records of the meetings of the Commission as well as the continued publication of those summary records in volume I of the Yearbook of the International Law Commission. The continuance of the present system of summary records corresponds to what has been a consistent policy of the General Assembly since the establishment of the Commission, and constitutes an essential requirement for the procedures and methods of work of the Commission and for the process of codification and progressive development of international law in general.

Methods of work

19. The Commission at its last session expressed the intention to review the conditions under which the commentaries are discussed and adopted with a view to the possible formulation of guidelines on the matter. It could not discuss the matter in all its aspects for lack of time. It however agreed that it was desirable that commentaries to draft articles be taken up at as early a stage as possible in the course of each session to receive the required degree of attention and be in any case discussed separately rather than in the framework

of the consideration of the Commission's report to the General Assembly. The Commission has already taken steps in that direction at the current session.

20. The Commission intends to hold a comprehensive discussion of the question of commentaries at its next session.

Duration of the next session

21. The Commission reiterates its view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on its agenda make it desirable that the usual duration of the session be maintained. The Commission emphasizes that it made full use of the time and services made available to it during its current session.

D. Cooperation with other bodies

22. The Commission was represented at the August 1993 session of the Inter-American Juridical Committee, in Rio de Janeiro, by Mr. Carlos Calero Rodrigues who attended the session as observer for the Commission and addressed the Committee on behalf of the Commission. The Inter-American Juridical Committee was represented at the present session of the Commission by Mr. José Luis Siqueiros. Mr. Siqueiros addressed the Commission at its 2358th meeting on 28 June 1994 and his statement is recorded in the summary record of that meeting.

23. The Commission was represented at the 1994 session of the Asian-African Legal Consultative Committee, in Tokyo, by Mr. Vladlen Vereshchetin, who attended the session as observer for the Commission and addressed the Committee on behalf of the Commission. The Asian-African Legal Consultative Committee was represented at the present session of the Commission by the Secretary-General of the Committee, Mr. Tang Changyuan. Mr. Tang addressed the Commission at its 2350th meeting on 7 June 1994 and his statement is recorded in the summary record of that meeting.

24. The Commission was represented at the December 1993 session of the European Committee on Legal Cooperation in Strasbourg by Mr. Gudmundur Eiriksson who attended the session as observer for the Commission and addressed the Committee on behalf of the Commission. The European Committee on Legal Cooperation was represented at the present session of the Commission by Mr. Hans J. Nilsson. Mr. Nilsson addressed the Commission at its 2360th meeting on 5 July 1994 and his statement is recorded in the summary record of that meeting.

E. Date and place of the forty-seventh session

25. The Commission agreed that its next session, to be held at the United Nations Office at Geneva, should begin on 1 May and conclude on 21 July 19945

F. Representation at the forty-ninth session of the General Assembly and at the Congress of Public International Law (New York, 13-17 March 1995)

26. The Commission decided that it should be represented at the forty-ninth session of the General Assembly and at the Congress of Public International Law by its Chairman, Mr. Vladlen Vereshchetin.

G. International Law Seminar

27. Pursuant to General Assembly resolution 48/31, the United Nations Office at Geneva organised the thirtieth session of the International Law Seminar during the current session of the Commission. The Seminar is intended for post-graduate students of international law and young professors or government officials dealing with questions of international law in the course of their work.

28. A Selection Committee under the chairmanship of Professor Philippe Cahier (The Graduate Institute, Geneva) met on 18 March 1994 and, after having considered some 70 applications for participation in the Seminar, selected 24 candidates of different nationalities, mostly from developing countries. Twenty-three of the selected candidates were able to participate in this session of the Seminar. 2/

29. The session of the Seminar was held at the Palais des Nations from 24 May to 10 June 1994 under the direction of Ms. Meike Noll-Wagenfeld, United Nations Office at Geneva. It was opened by the Chairman of the

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2/ The list of participants in the thirtieth session of the International Law Seminar is as follows: Mr. Jassem Bin Nasser Al Thani (Qatar); Ms. Kangne Barry (Guinea); Mr. Eugen Carpov (Moldova); Ms. Carmen Isabel Claramunt (Costa Rica); Mr. Petrus Compton (Saint-Lucia); Mr. Pierre D'Argent (Belgium); Mr. Ehud-Moshe Eitam (Israel); Mr. Mete Erdem (Turkey); Ms. Socorro Flores-Liera (Mexico); Mr. Brahima Fomba (Mali); Mr. Ghazi Gherairi (Tunisia); Mr. Jian Guan (China); Mr. Munyaradzi Gwisai (Zimbabwe); Ms. Aymée Hernandez Quesada (Cuba); Mr. Adolf Huala (Indonesia); Mr. Bernard Kishoiyian (Kenya); Ms. Evaggelia Kleftodimou (Greece); Mr. Milan Kollar (Slovakia); Ms. Elvira Mendez Chang (Peru); Mr. Sergeiy Meshcheryak (Ukraine); Ms. Michèle Olivier (South Africa); Mr. Kégham Tamamian (Syria); Ms. Deepika Udagama (Sri Lanka).

Commission, Mr. Vladlen Vereshchetin. During the three weeks of the session, the participants in the Seminar attended the meetings of the International Law Commission and lectures specifically organized for them.

30. Several lectures were given by members of the Commission as follows: Mr. Ahmed Mahiou, "The Work of the International Law Commission"; Mr. Vaclav Mikulka, "Succession of States in respect of treaties (some recent developments)"; Mr. Francisco Villagran-Kramer, "Immunity of States from civil and commercial jurisdiction"; Mr. Alexander Yankov, "Legal and institutional implications of United Nations peacekeeping operations".

31. In addition, lectures were given by: Ms. B. Molina-Abram, Office of Legal Affairs, "The War Crimes Commission and the International Criminal Tribunal for the Former Yugoslavia"; Ms. B. Mukherjee, Centre for Human Rights, "The World Conference on Human Rights and its follow-up"; Mr. A. Noll, Legal Adviser, International Telecommunication Union (ITU) "Specific features of the new Constitution and Convention of the ITU, Geneva 1992, in the light of the Vienna Convention on the Law of Treaties, 1969"; Ms. D. Plattner, Counsellor, Legal Division, International Committee of the Red Cross (ICRC), "Mandate and legal statute of the ICRC"; Mr. F. Roessler, Director, Legal Affairs Division, GATT "The World Trade Organization: Some legal aspects".

32. Three Working Groups were created at the initiative of Mr. Christian Tomuschat, which dealt with the following topics: (1) "Legal basis for the establishment of an International Criminal Court", under the tutorship of Mr. Francisco Villagran-Kramer; (2) "International Crimes - Article 19 of the draft articles on State Responsibility", under the tutorship of Mr. Gaetano Arangio-Ruiz; (3) "Reservations to Multilateral Treaties", under the tutorship of Mr. Christian Tomuschat. Each Working Group elaborated a paper on its topic which was presented orally and a copy of which was made available to the members of the Commission.

33. As it has become a tradition for the Seminar, the participants enjoyed the hospitality of the Republic and Canton of Geneva.

34. At the end of the session of the Seminar, Mr. Vladlen Vereshchetin and Ms. Noll-Wagenfeld on behalf of the Director-General of the United Nations Office at Geneva, addressed the participants. Mr. Ghazi Gherairi addressed the Commission on behalf of the participants. In the course of this brief ceremony, each of the participants was presented with a certificate attesting to his or her participation in the thirtieth session of the Seminar.

35. Voluntary contributions from Member States to the United Nations Trust Fund for the International Law Seminar permit to grant fellowships in particular to participants from developing countries. The Commission noted with particular appreciation that the Governments of Austria, Denmark, Finland, France, Germany, Iceland, Norway, Slovenia and Switzerland had made voluntary contributions to that Fund. Thanks to those contributions it was possible to award a sufficient number of fellowships in order to achieve adequate geographical distribution of participants and to bring from distant countries deserving candidates who would otherwise have been prevented from participating in the session. This year, full fellowships (travel and subsistence allowance) were awarded to 14 participants and partial fellowships (subsistence only) could be given to 2 participants. Thus of the 667 participants, representing 132 nationalities, who have taken part in the Seminar since its inception in 1964, fellowships have been awarded to 359.

36. The Commission stresses the importance it attaches to the sessions of the Seminar, which enables young lawyers, especially those from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. As all the available funds are exhausted, the Commission recommends that the General Assembly should again appeal to States which can do so to make the voluntary contributions that are needed for the holding of the Seminar in 1995 with as broad a participation as possible.

37. The Commission noted with regret that in 1994 very limited interpretation services had been made available to the Seminar and it expressed the hope that every effort would be made to provide the Seminar at future sessions with full services and facilities despite existing financial constraints.

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DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Proposal by Mr. Vargas Carreño

Article 21

Systematic or mass violations of human rights

1. An agent or representative of a State or anyone who acts with the authorization, support or acquiesence of a State and commits or orders the commission in a systematic or mass manner of any of the following acts:

(a) Murder;

(b) Enforced disappearance of persons. For the purposes of this Code, enforced disappearance shall be considered to be the act of unlawfully depriving a person of his freedom, in whatever way, followed by an absence of

information or a refusal to acknowledge his deprivation of freedom or to give information on the whereabouts of that person, thereby impeding the exercise of all his rights; 1/

(c) Torture;

shall, on conviction thereof, be sentenced to ... .

2. An agent or representative of a State who in the exercise of his functions participates in the adoption of acts or legislative, executive, administrative or any other measures which, de jure or de facto, entail:

(a) Establishing or maintaining over persons a status of slavery, servitude, or forced labour;

(b) Institutionalization of racial discrimination;

(c) Deportation or forcible transfer of population on social, political, racial, religious or cultural grounds;

shall, on conviction thereof, be sentenced to ... .

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1/ The Inter-American Convention on Forced Disappearance of Persons, adopted in Belem do Pará, Brazil, in June 1994, defines enforced disappearance in the following terms in article II: "For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiesence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees".

For its part, the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 18 December 1992 in resolution 47/133 states the following in the preamble: "Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiesence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,".

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INTERNATIONAL LAW COMMISSION
Forty-seventh session
2 May-21 July 1995

DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Titles and texts of draft articles on the Draft Code of Crimes against the Peace and Security of Mankind adopted by the Drafting Committee on second reading at its 47th session

Draft Code of Crimes against the Peace and Security of Mankind

[PART I
Chapter 1. ...]

Article 1 1/

Scope and application of the present Code

1. The present Code applies to the crimes against the peace and security of mankind set forth in Part II.

2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

1/ The Drafting Committee agreed that the question of characteristics of the crimes under the Code should be examined at a later stage.

[Chapter 2. ...]

[Article 2]

[Redrafted and appears as paragraph 2 to article 1]

... 2/

[Article 4]

[Deleted]

Article 5

Responsibility of States

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.

Article 5 bis

Establishment of jurisdiction

Each State party shall take such measures as may be necessary to establish its jurisdiction over crimes against the peace and security of mankind.

Article 6 3/

Obligation to extradite or prosecute

The State in the territory of which an individual alleged to have committed a crime against the peace and security of mankind is found shall either extradite that individual or refer the case to its competent authorities for the purpose of prosecution.

Article 6 bis

Extradition of alleged offenders

1. To the extent that the crimes set out in articles ... are not extraditable offences in any extradition treaty existing between States parties, they shall be deemed to be included as such therein. States parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2/ The Drafting Committee agreed to revert to art. 3 at a later stage.

3/ The question of jurisdiction will be reviewed, once the substantive articles on crimes are finalized, with a view to examining the possibility of exclusive international jurisdiction in the case of specific crimes including aggression.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. State parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purpose of extradition between States parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States parties which have established their jurisdiction in accordance with article 5 bis.

... 4/

Article 8

Judicial guarantees

1. An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts and shall have the rights:

(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law or by treaty;

(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) to be tried without undue delay;

(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;

4/ The Drafting Committee then agreed to revert to art. 7 at a later stage.

(f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) not to be compelled to testify against himself or to confess guilt.

2. An individual convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

Article 9

Non bis in idem

1. No one shall be tried for a crime against the peace and security of mankind for which he has already been finally convicted or acquitted by an international criminal court.

2. Subject to paragraphs 3, 4 and 5, no one shall be tried for a crime against the peace and security of mankind in respect of an act for which he has already been finally convicted or acquitted by a national court.

3. Notwithstanding the provisions of paragraph 2, an individual may be tried by an international criminal court for a crime against the peace and security of mankind if:

(a) the act which was the subject of a trial and judgement as an ordinary crime corresponds to one of the crimes characterized in the present Code; or

(b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

4. Notwithstanding the provisions of paragraph 2, an individual may be tried by a national court of another State for a crime against the peace and security of mankind if:

(a) the act which was the subject of the previous judgement took place in the territory of that State; or

(b) that State has been the main victim of the crime.

5. In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Non-retroactivity

1. No one shall be convicted under the present Code for acts committed before its entry into force.

2. Nothing in this article shall preclude the trial and punishment of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

Article 11

Order of a Government or a superior

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, [but may be considered in mitigation of punishment if justice so requires]. 5/.

Article 12

Responsibility of the superior

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime.

Article 13

Official position and responsibility

The official position of an individual who commits a crime against the peace and security of mankind, and particularly the fact that he acts as head of State or Government, does not relieve him of criminal responsibility.

... 6/

5/ The issue addressed in the bracketed phrase will be examined in the context of an article to be drafted on mitigating or aggravating circumstances.

6/ The Drafting Committee agreed to revert to article 14 at a later stage.

[PART II

.....]

Article 15 7/

Aggression

[1. An individual who, as leader or organizer, commits an act of aggression shall be punished under the present Code.]

2. Aggression is the use of armed force by a State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

Article 19

Genocide

[1. An individual who commits an act of genocide shall be punished under the present Code.] 8/

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.

3. The following acts shall also be punishable:

(a) conspiracy to commit genocide;

(b) direct and public incitement to commit genocide;

(c) attempt to commit genocide;

(d) complicity in genocide. 9/

7/ The Drafting Committee will reexamine paragraph 1 of each of the articles of Part II with a view to determining the possibility of adopting uniform language and in the light of the decision it will reach in relation to article 3.

8/ Ibid.

9/ The Drafting Committee will reexamine paragraph 3 of the article in the light of the decision it will reach in relation to article 3.